

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BARRETT BUSINESS SERVICES,
INC.,

Plaintiff,

v.

CHARLES COLMENERO and
JANE DOE COLMENERO, and the
marital community comprised
thereof; and SANTIAGO ALEJO and
JANE DOE ALEJO, and the marital
community comprised thereof,

Defendants.

NO. 1:22-CV-3122-TOR

ORDER DENYING DEFENDANTS'
MOTION TO DISMISS

BEFORE THE COURT is Defendants' Joint Motion to Dismiss Pursuant to

Fed. R. Civ. P. 12(b)(1) and (6). ECF No. 24. This matter was submitted for

consideration without oral argument. The Court has reviewed the record and files

herein, and is fully informed. For the reasons discussed below, Defendants' Joint

Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and (6) (ECF No. 24) is

denied.

BACKGROUND

This case arises out of Defendants' alleged misappropriation of Plaintiff's trade secrets. On September 15, 2022, Plaintiff filed a complaint against Defendants alleging the following cause of action: (1) breach of contract, (2) violation of Washington Trade Secrets Act, RCW 19.108.010(4), (3) violation of the Defend Trade Secrets Act of 2016 ("DTSA"), 18 U.S.C. § 1836(b), and (4) tortious interference with contractual relations. ECF No. 1 at 6-12, ¶¶ 4.1-4.5.

On October 19, 2022, the Court denied Plaintiff’s Motion for Temporary Restraining Order. ECF No. 23. On October 27, 2022, Defendants filed the present Joint Motion. ECF No. 24. Plaintiff filed a response, as well as an Amended Complaint, which raises additional causes of action in addition to the original claims. ECF Nos. 27, 29. Defendants filed a reply that addresses the Amended Complaint. ECF No. 33. The following facts are drawn from the operative Amended Complaint, which are accepted as true for the purposes of the present motion. *Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir. 2012).

Plaintiff is a leading human resources management company that contracts with small and medium-sized businesses to provide comprehensive human resources management solutions, including temporary staffing and professional employer organization services. ECF No. 27 at 3, ¶ 3.1. Plaintiff generates confidential information, including management techniques, client contacts,

1 contract terms, sales pipeline, client relationship management techniques, pricing
2 and costing, and worker recruitment strategies. *Id.*, ¶ 3.2. Plaintiff learned each
3 client's temporary worker requirements, name and contact information, and
4 tailored pricing and contract terms. *Id.* Plaintiff never reveals specific client
5 contacts, rate agreements, or service needs. *Id.* at 4, ¶ 3.3.

6 Charles Colmenero began working for Plaintiff as an Area Manager in
7 Hermiston, Oregon in April 2014. *Id.*, ¶ 3.43. Santiago Alejo began working for
8 Plaintiff as a recruitment specialist in July 2015. *Id.*, ¶ 3.5. In connection with
9 their employment, Colmenero and Alejo were provided with access to confidential,
10 proprietary, and trade secret information belonging to Plaintiff. *Id.*, ¶ 3.6.
11 Colmenero received the Employee Handbook and signed the acknowledgment on
12 April 25, 2014. *Id.* at 5, ¶ 3.7. Alejo received the Employee Handbook and signed
13 the acknowledgement on July 17, 2015. *Id.* When they signed the
14 acknowledgement/receipt, they confirmed that they agreed that:

15 I am aware that during the course of my employment confidential
16 information will be made available to me, for instance, product
17 designs, marketing strategies, customer lists, pricing policies and
18 other related information. I understand that this information is
19 proprietary and critical to the success of BBSI and must not be given
out or used outside of BBSI's premises or with non-BBSI employees.
In the event of termination, whether voluntary or involuntary, I hereby
agree not to utilize or exploit this information with any other
individual or company.

20 *Id.*

1 Colmenero and Alejo also received Barrett Business Services, Inc. Code of
2 Business Conduct and the Acknowledgement and Confirmation of Receipt of the
3 BBSI Code of Business Conduct on April 25, 2014 and July 17, 2015 respectively.
4 *Id.*, ¶ 3.8. They agreed to: “Avoid conflicts of interest where possible and disclose
5 and handle ethically any conflicts that do arise [and] Protect Barrett’s confidential
6 and proprietary information and that of our customers and vendors.” *Id.*, ¶ 3.8.

7 Additionally, the Employee Handbook contained policies regarding non-
8 solicitation and policies governing employees’ access to Plaintiff’s trade secrets
9 and other confidential and proprietary information: “Each employee has the duty to
10 respect and protect the confidentiality of all such information, whether belonging
11 to Barrett or others with which Barrett does business, and not to use that
12 information for personal advantage.” *Id.* at 6, ¶¶ 3.9, 3.10. Plaintiff maintained
13 rigorous information technology security protocols, include requiring usernames
14 and passwords for employees, and allowing various levels of access to sensitive
15 information depending upon position. *Id.*, ¶ 3.11. Plaintiff specifically protected
16 the confidentiality of information regarding customer needs, pricing information,
17 worker availability, and past contractual terms. *Id.*, ¶ 3.12.

18 Once onboarded, Colmenero and Alejo recruited temporary workers for
19 placement with Plaintiff’s clients and were given access to confidential business
20

1 information, including temporary worker management techniques, marketing and
2 sales strategies, compensations practices, pricing, and deal terms. *Id.* at 7, ¶ 3.13.

3 On June 1, 2022, while still employed with Plaintiff, Alejo created a
4 Facebook group called “Yakima Valley Jobs” to recruit temporary workers. *Id.*, ¶
5 3.14. Alejo initially posted his personal phone number for contact information
6 with no reference to Plaintiff and later posted with Personna branding. *Id.*

7 On July 8, 2022, Alejo ceased his employment with Plaintiff after giving
8 two-weeks’ notice. *Id.*, ¶ 3.16. During Alejo’s notice period, Alejo discussed his
9 plans for a new job with another employee, telling the employee that she would
10 “see” and that “it’ll be really funny.” *Id.*, ¶ 3.17. This employee later tried to
11 follow up with a high-profile client mysteriously fizzled out, and Alejo refused to
12 give the client phone number, not wanting any Plaintiff employees to reach out to
13 clients Alejo handled. *Id.* at 8, ¶ 3.18.

14 On July 13, 2022, after discovering Colmenero was a named owner of a firm
15 that provided staffing and human resources services to Plaintiff while Colmenero
16 was still employed, Plaintiff confronted Colmenero about the conflict of interest in
17 violation of the Handbook and Code of Business ethics. *Id.*, ¶ 3.20. Colmenero
18 responded by resigning that same day. *Id.*, ¶¶ 3.15, 3.20.

19 By August 2022, Plaintiff learned that Colmenero and Alejo had established
20 a competing business, Repsel Associates, Inc. d/b/a Personna Employer Services

1 while working for Plaintiff. *Id.*, ¶ 3.21. Plaintiff subsequently discovered
2 Defendants were approaching Plaintiff's customers and soliciting their business in
3 direct violation of the various agreements and covenants imposed by law and
4 contract. *Id.* at 8–9, ¶ 3.22.

5 Plaintiff discovered Defendants were quickly usurping Plaintiff by using
6 Plaintiff's own trade secrets. *Id.*, ¶ 3.23. Plaintiff learned Colmenero and Alejo
7 stole another employee's book of business and destroyed their own personnel files
8 after they quit. *Id.*, ¶¶ 3.24, 3.25. Colmenero and Alejo immediately began using
9 this information to solicit Plaintiff's clients by pretending to work for Plaintiff and
10 using Plaintiff's confidential information such as staffing needs and confidential
11 rate agreement. *Id.*, ¶ 3.27. Colmenero and Alejo used information to offer a
12 client a lower rate on the same terms, which they could not have done without
13 Plaintiff's confidential information. *Id.* at 10, ¶¶ 3.28, 3.29. Plaintiff was forced to
14 match the lower rate, losing income in the process. *Id.* at 11, ¶ 3.31. As a result,
15 Plaintiff continues to work at a discount, losing the value confidential information
16 it spent years developing. *Id.*, ¶ 3.32.

17 DISCUSSION

18 I. Amended Complaint

19 Plaintiff filed an Amended Complaint within 21 days of Defendants' motion.
20 ECF No. 27. A party may amend a pleading "once as a matter of course within ...

1 21 days after service of a responsive pleading.” Fed. R. Civ. P. 15(a)(1)(B). As a
2 result, the Amended Complaint supersedes the original. *Ramirez v. Cty. of San*
3 *Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015). However, Defendants contend
4 the motion’s arguments are applicable to the Amended Complaint. ECF No. 33.
5 Therefore, the Court will address the arguments in light of the factual allegations in
6 the operative Amended Complaint.

7 **II. Subject Matter Jurisdiction**

8 Defendants challenge Plaintiff’s assertion of subject matter jurisdiction.
9 ECF No. 33 at 11. As stated in the Court’s prior order, the Court finds subject
10 matter jurisdiction exists pursuant to the Defend Trade Secrets Act (“DTSA”)
11 federal question. 28 U.S.C. § 1331. ECF No. 23. Like the original Complaint, the
12 allegations in the Amended Complaint re-plead connections in both Washington
13 and Oregon sufficient to establish trade secret activities in interstate commerce for
14 purposes of the DTSA, 18 U.S.C. § 1836(b)(1). ECF No. 27.

15 **III. Motion to Dismiss**

16 Federal Rule of Civil Procedure 12(b)(6) provides that a defendant may
17 move to dismiss the complaint for “failure to state a claim upon which relief can be
18 granted.” A Rule 12(b)(6) motion will be denied if the plaintiff alleges “sufficient
19 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its
20 face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v.*

1 *Twombly*, 550 U.S. 544, 570 (2007)). While the plaintiff’s “allegations of material
2 fact are taken as true and construed in the light most favorable to the plaintiff” the
3 plaintiff cannot rely on “conclusory allegations of law and unwarranted inferences
4 … to defeat a motion to dismiss for failure to state a claim.” *In re Stac Elecs. Sec.*
5 *Litig.*, 89 F.3d 1399, 1403 (9th Cir. 1996) (citation and brackets omitted). That is,
6 the plaintiff must provide “more than labels and conclusions, and a formulaic
7 recitation of the elements.” *Twombly*, 550 U.S. at 555.

8 When deciding, the Court’s review is limited to the complaint, documents
9 incorporated into the complaint by reference, and judicial notice. *Metzler Inv.*
10 *GMBH v. Corinthian Colleges, Inc.*, 540 F.3d 1049, 1061 (9th Cir. 2008).

11 **A. Breach of Contract**

12 Defendants move to dismiss Plaintiff’s breach of contract claims on the
13 grounds Plaintiff fails to plead facts showing a valid, enforceable agreement. ECF
14 No. 24.

15 In a breach of contract action, the plaintiff must show (1) the existence of a
16 valid contract, (2) breach of the contract, and (3) resulting damages. *Lehrer v.*
17 *State, Dep’t of Social & Health Servs.*, 101 Wash. App. 509, 516 (2000). Whether
18 a signed employee handbook or code of business conduct forms a valid contract is
19 a question of fact. See *Swanson v. Liquid Air Corp.*, 118 Wash. 2d 512, 520-526
20 (1992); *Quedado v. Boeing Co.*, 168 Wash. App. 363, 370-375 (2012).

1 Plaintiffs assert Colmenero and Alejo signed enforceable contracts,
2 including the employee handbook and code of business conduct, receiving
3 consideration in the form of employment. ECF No. 27 at 11, ¶ 4.1.b. Plaintiff
4 alleges these Defendants breached the agreements by utilizing confidential and
5 proprietary information such as confidential pricing data, worker lists, and contract
6 terms to solicit Plaintiff's clients, which caused Plaintiff concrete harm by forcing
7 Plaintiff to lower its prices. *Id.*, ¶¶ 4.1.c – 4.1.e. While the Court previously found
8 there were significant questions to whether an enforceable contract exists for
9 purposes of a temporary restraining order, the Court finds the Amended Complaint
10 states sufficient factual matter, accepted as true, to state a claim to relief for breach
11 of contract that is plausible on its face. *Iqbal*, 556 U.S. at 678.

12 **B. Trade Secrets**

13 Defendants move to dismiss Plaintiff's federal and state trade secret claims
14 on the grounds Plaintiff fails to allege any plausible trade secrets with specificity,
15 fails to plead it made reasonable efforts to maintain secrecy, and fails to identify
16 how the secrets were misappropriated. ECF No. 24 at 10–12.

17 The DTSA authorizes private civil actions for misappropriation of trade
18 secrets that are related to a product or service used in, or intended for use in,
19 interstate commerce. 18 U.S.C. § 1836(b)(1). The relevant portions of the DTSA
20 are almost identical to those in Washington's Uniform Trade Secrets Act

1 (“UTSA”). *Compare* 18 U.S.C. § 1839 with RCW 19.108.010; *Bombardier Inc. v.*
2 *Mitsubishi Aircraft Corp.*, 383 F. Supp. 3d 1169, 1178 (W.D. Wash. 2019). The
3 same evidence used to establish liability under Washington’s UTSA will also
4 establish liability under the DTSA. *See id.* at 1178.

5 Washington’s UTSA codified the principles of common law trade secret
6 protection and allows plaintiffs to receive damages for misappropriation of trade
7 secrets. *Ed Nowogroski Ins., Inc. v. Rucker*, 137 Wash. 2d 427, 438 (1999)
8 (citations omitted); RCW 19.108.030. The UTSA defines trade secrets as:

9 [I]nformation, including a formula, pattern, compilation, program,
device, method, technique, or process that:

10 (a) Derives independent economic value, actual or potential, from not
being generally known to, and not being readily ascertainable by
proper means by, other persons who can obtain economic value from
its disclosure or use; and

11 (b) Is the subject of efforts that are reasonable under the
circumstances to maintain its secrecy.

12
13 RCW 19.108.010(4)(a)-(b). Whether the specific information in question is a trade
14 secret is an issue of fact. *Ed Nowogroski Ins., Inc.*, 137 Wash. 2d at 436 (citation
omitted).

15 A plaintiff seeking a claim under the UTSA bears the burden of proving that
16 legally protectable secrets exist. *Boeing Co. v. Sierracin Corp.*, 108 Wash. 2d 38,
17 49 (1987) (citation omitted). Therefore, “a party must establish (1) that the

1 information derives independent economic value from not being generally known
2 or readily ascertainable to others who can obtain economic value from knowledge
3 of its use and (2) that reasonable efforts have been taken to maintain the secrecy of
4 the information.” *Modumetal, Inc. v. Xtalic Corp.*, 4 Wash. App. 2d 810, 823
5 (2018). However, the plaintiff is not required to prove every element of
6 information qualifies as a trade secret “since trade secrets frequently contain
7 elements that by themselves may be in the public domain but together qualify as
8 trade secrets.” *Boeing Co.*, 108 Wash. 2d at 50 (citations omitted).

9 One key factor courts consider in determining whether information has
10 “independent economic value” is the effort and expense that was used to develop
11 the information. *Ed Nowogroski Ins., Inc.*, 137 Wash. 2d at 438; *see also Lyft, Inc.*
12 *v. City of Seattle*, 190 Wash. 2d 769, 782 (2018). Courts also consider the “novelty
13 and uniqueness” of the information. *McCallum v. Allstate Prop. & Cas. Ins. Co.*,
14 149 Wash. App. 412, 425 (2009) (quotations and citation omitted). “To be novel,
15 the information must not be readily ascertainable from another source.” *Inteum*
16 *Co., LLC v. Nat'l Univ. of Singapore*, 371 F. Supp. 3d 864, 877 (W.D. Wash.
17 2019) (quotations and citations omitted). Through affidavits and declarations,
18 plaintiffs must provide “specific, concrete examples illustrating that the . . .
19 information meets the requirements for a trade secret.” *Modumetal, Inc.*, 4 Wash.
20 App. 2d at 824 (quotation and citation omitted). Finally, a plaintiff must also

1 establish that reasonable efforts have been taken to maintain or protect the secrecy
2 of information at issue. *Id.* at 823.

3 Plaintiff asserts the following trade secrets: Plaintiff's customers and clients,
4 pricing, methods, strategies, and techniques, all of which Plaintiff alleges are
5 proprietary and confidential. ECF No. 27 at 13–14, ¶¶ 4.2.b, 4.3.b. Plaintiff
6 asserts it has taken measures to prevent unauthorized disclosure or use of this
7 information by establishing cybersecurity measures, requiring employees to keep
8 information secret, and not disclosing most of the information especially as it
9 pertains to client needs, pricing, worker availability, and contractual arrangements.

10 *Id.*, ¶¶ 4.3.c, 4.2.c. Plaintiff asserts the individual Defendants willfully and
11 maliciously misappropriated this information, taking the information in electronic
12 and hard copy form, as well as memorization, and using the information
13 individually and through Personna, its competing businesses. *Id.*, ¶¶ 4.3.d, 4.2.d.
14 As a result of this conduct, Plaintiff alleges damages in the form of actual and
15 threatened loss of business. *Id.*, ¶¶ 4.3.e, 4.2.e.

16 The Court finds the Amended Complaint states sufficient factual matter,
17 accepted as true, to state a claim to relief for the federal and state trade secret
18 claims that is plausible on its face. *Iqbal*, 556 U.S. at 678. Defendants' factual
19 arguments and disputes are more appropriate for summary judgment or trial.

20 //

1 **C. Tortious Interference**

2 Defendants move to dismiss Plaintiff's tortious interference claim on the
3 grounds there are no allegations regarding the existence of, or damage, to any
4 business expectancy. ECF No. 24 at 15.

5 In a tortious interference claim under Washington law, plaintiff must show
6 "(1) the existence of a valid ... business expectancy; (2) that defendants had
7 knowledge of that [expectancy]; (3) an intentional interference inducing or causing
8 a breach or termination of the ... expectancy; (4) that defendants interfered for an
9 improper purpose or used improper means; and (5) resultant damage." *Life*
10 *Designs Ranch, Inc. v. Sommer*, 191 Wash. App. 320, 337 (2015). The claims
11 need specific evidentiary support; for example, in *Life Designs Ranch*, the court
12 found the plaintiff's conclusory claim of harm to reputation lacked evidentiary
13 support where "[n]o client, potential client, or referral source submitted an affidavit
14 establishing they can no longer trust [plaintiff] or did not choose [plaintiff's]
15 designs because of [defendant's] website." *Id.*

16 Plaintiff alleges Defendants intentionally interfered with Plaintiff's business
17 by unfairly soliciting Plaintiff's clients, customers, and workers. ECF No. 27 at 27
18 at 15, ¶ 4.4.c. Specifically, Plaintiff alleges a business expectancy with Jewel Fruit
19 that Defendants interfered with using Plaintiff's confidential information in an
20 effort to undercut Plaintiff's asking price. *Id.*

The Court finds the Amended Complaint states sufficient factual matter, accepted as true, to state a claim to relief for tortious interference with business expectancy that is plausible on its face. *Iqbal*, 556 U.S. at 678. Defendants' factual arguments and disputes are more appropriate for summary judgment or trial.

The Court declines to address Defendants' remaining arguments raised for the first time in the reply regarding additional claims asserted in the Amended Complaint. *United States v. Bohn*, 956 F.2d 208, 209 (9th Cir. 1992).

ACCORDINGLY, IT IS HEREBY ORDERED:

Defendants' Joint Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1)

The District Court Executive is directed to enter this Order and furnish copies to counsel.

DATED December 19, 2022.



THOMAS O. RICE
United States District Judge